

AMENDED IN SENATE APRIL 12, 2005

**SENATE BILL**

**No. 985**

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**Introduced by Senator Dunn**

February 22, 2005

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An act to add Section 110592 to the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 985, as amended, Dunn. Adulterated candy: lead poisoning prevention.

Existing law, the Sherman Food, Drug, and Cosmetic Law, requires the State Department of Health Services to regulate manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the federal Food, Drug, and Cosmetic Act. The law makes it unlawful for any person to adulterate food and defines adulterated food to include a confectionary containing a ~~nonnutritious~~ *nonnutritious* substance. Violation of these provisions is a crime.

This bill would require the department to regulate lead in chili, tamarind, and other candy, as defined. The bill would require the department to test the candy to determine the presence of lead, to issue related health advisories, and to order local health officers to remove from shelves or retailers, and to order the embargo of candy found to contain lead at levels above the permissible standard as determined by the Office of Environmental Health Hazard Assessment. The bill would require the department to adopt related regulations. The bill would ~~authorize~~ *require* the department to *convene an interagency collaborative*, and to enter into contracts with county health officers and environmental justice organizations. By changing the definition of a crime, and by requiring enforcement of these provisions in part by

county health officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 110592 is added to the Health and  
2 Safety Code, to read:

3 110592. (a) The department shall regulate candy to ensure  
4 that the candy is not adulterated.

5 (b) For the purposes of this chapter, “candy” means any  
6 confectionary intended for individual consumption that contains  
7 chili, tamarind, or any other ingredient suspected of containing  
8 high levels of lead as set forth in regulations adopted by the  
9 department.

10 (c) For purposes of this section—~~“adulterated candy”~~ *the*  
11 *following terms have the following meanings:*

12 (1) “Office” means the Office of Environmental Health  
13 Hazard Assessment.

14 (2) “Adulterated candy” means any candy with lead levels  
15 that exceed the naturally occurring level as determined by  
16 regulations adopted by the ~~Office of Environmental Health~~  
17 ~~Hazard Assessment~~ office. Moreover, candy is adulterated if its  
18 wrapper or the ink on the wrapper contains any detectable levels  
19 of lead. *The office shall establish the health-based standard by*  
20 *July 1, 2006.*

21 (3) “Wrapper” means all packaging materials in contact with  
22 the candy, including, but not limited to, the paper cellophane,  
23 plastic container, stick handle, spoon, small pot (olla), and

*squeeze tube, or similar devices. “Wrapper” does not include any part of the packaging from lead that will not leach, as demonstrated by the manufacturer, to the satisfaction of the office.*

*(d) The standard adopted pursuant to paragraph (2) of subdivision (c) shall be reviewed by the office every three- to five-year period in order to determine whether advances in scientific knowledge or changes in detection limits require revision of the standard.*

~~(d)~~

*(e) The department shall do all of the following:*

*(1) Ensure that the candy is not adulterated.*

*(2) Require the testing of sample candy to ensure that the candy is not adulterated.*

*(3) Issue health advisories when candy has been found to be adulterated.*

*(4) Order local health officers to remove from shelves of retailers, any candy found to be adulterated.*

*(5) Order an embargo against candy that is found to be adulterated.*

*(6) Make enforcement of this article a major department goal.*

*(7) Enter into contracts with county health officers and county environmental health officers to collect samples of candy for submission to the food and drug—~~branch~~ Branch of the department for testing pursuant to this article.*

*(8) Through its food and drug—~~branch~~ Branch, test the samples of candy collected pursuant to this article.*

*(9) Through its childhood lead poisoning prevention—~~branch~~ Branch, draft, periodically update, and distribute a community flyer that identifies all candy found to be in compliance with the requirements of this section, for use by the department to inform the public and to educate retailers. This flyer shall be updated as necessary to remove any candy that is found to be adulterated.*

*(10) Enter into five to 10 grants to environmental justice organizations throughout the state to identify stores and candy that need to be tested. Pursuant to these grants, the organizations shall visit stores and document whether adulterated candy is being sold, and report to the department and to local enforcement agencies.*

(11) Issue and update community fliers listing adulterated candy and lead free candy. The environmental justice organizations shall use the flier for community education and outreach efforts.

(12) Adopt regulations necessary for the enforcement of this article.

(13) Evaluate the regulatory process, identify problems, and make changes or report to the Legislature, as necessary.

*(f) The department shall convene an interagency collaborative which is hereby established to serve as an oversight committee for the implementation of this section and to work with the office in establishing and revising the required standards. The interagency collaborative shall be composed of the following members:*

*(1) The department.*

*(2) The Childhood Lead Poisoning Branch of the department.*

*(3) The Food and Drug Branch of the department.*

*(4) The office.*

*(5) The office of the Attorney General.*

*(6) The federal Consumer Product Safety Commission.*

*(7) Representatives of California community environmental justice organizations.*

*SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

~~SEC. 2.~~

*SEC. 3.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those

1 costs shall be made pursuant to Part 7 (commencing with Section  
2 17500) of Division 4 of Title 2 of the Government Code.

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